Practice Guidelines

for

Certificate of Incapability Assessments

Under the *Patients Property Act*

Revised
March 2005

Compiled by the Public Guardian and Trustee of BC in consultation with physicians and other incapability assessors from throughout BC

TABLE OF CONTENTS

1. **Using These Practice Guidelines** 1

2. ***The Patients Property Act*** 1

3. **Guiding Principles for Issuing Certificates of Incapability** 3

4. **The Role of the Public Guardian and Trustee** 4

5. **The Role of the Mental Health Facility or Hospital Psychiatric Unit** 5

6. **The Role of the Director** 7

7. **Emergency Situations** 8

8. **Ending the Authority of the Public Guardian and Trustee** 8

9. **Reassessment Upon Request from the Adult** 8

10. **Appendices**

- 10.1 Issuing a Certificate of Incapability - Role of the Public Guardian and Trustee (Flow Chart) 9
- 10.2 Issuing a Certificate of Incapability - Role of Mental Health / Hospital Psychiatric Unit (Flow Chart) 10
- 10.3 Options to Consider 11
- 10.4 Public Guardian and Trustee Services to Adults Referral Form 12
- 10.5 Physician Opinion of Incapability Under the *Patients Property Act* Form 16
- 10.6 Functional and Decision Making Assessment Form 20
- 10.7 Sample Client Notification Letter 26
- 10.8 Sample Family Notification Letter 27
- 10.9 Director's Checklist for Issuing a Certificate of Incapability 28
- 10.10 Sample Summary of Assessment 29
- 10.11 Sample Certificate of Incapability 30
- 10.12 Sample Certificate of Capability 31
- 10.13 Sample Confirmation of Discharge 32
- 10.14 Financial and Personal Competency Assessments for British Columbia Seniors by Dr. Martha Donnelly 33
- 10.15 Regional Contact Information 37

1. USING THESE PRACTICE GUIDELINES

1.1 Background

There are a number of laws in BC that aim to assist adults who may be mentally incapable and in need of support. Each of these laws provides different remedies and include different tests of incapability.

These practice guidelines are about the process for conducting incapability assessments and issuing Certificates of Incapability under the *Patients Property Act*. Certificates appoint the Public Guardian and Trustee of BC (PGTBC) as Committee of Estate and should only occur as a last resort when this is the least intrusive and most effective alternative.

1.2 Reason for the Guidelines

These guidelines have been created to help protect the rights of adults by establishing a consistent and fair process throughout BC for issuing Certificates of Incapability. They have been developed because the *Patients Property Act* is non-specific on incapability assessment and certification processes. The process outlined here, in part, parallels the court application process and strengthens it by using a multidisciplinary, rather than a purely medical approach.

1.3 Who Will Use These Guidelines?

They will be of use to you as a staff member of a mental health team, hospital psychiatric unit, or the Public Guardian and Trustee of BC (PGTBC) when there is reason to believe that an adult is incapable of managing his or her financial and legal affairs and a Certificate of Incapability is needed, and the best option.

These guidelines have been developed in consultation with physicians and assessors.

2. THE *PATIENTS PROPERTY ACT*

2.1. Key Provisions

An adult deemed incapable of managing his or her own financial and legal affairs becomes a patient under the *Act* in one of two ways:

a) **a certificate** is issued by a director of a provincial mental health facility as defined in the (*Mental Health Act)* stating that the adult, because of mental infirmity arising from disease, age or otherwise, is incapable of managing his or her affairs thereby making the Public Guardian and Trustee Committee of Estate, or

b) **a Supreme Court Order** deems an adult to be incapable of managing his or her affairs (Committee of Estate) and/or, himself or herself (Committee of Person), and appoints the applicant as Committee.

2.2 Certificates

Certificates of Incapability are issued by the Director of a provincial mental health facility or hospital psychiatric unit. A Certificate of Incapability removes the adult's right to make decisions regarding his or her own legal and financial affairs and automatically appoints the Public Guardian and Trustee as their Committee of Estate. **Only** the PGTBC can be appointed by certificate.

A Certificate of Incapability should only be issued as a last resort. The right to manage one's own financial and legal affairs is significant and should only be removed when other less intrusive options have been considered or tried.

> Certificates and Court Orders under this *Act* should only be pursued as a last resort.

2.3 Court Orders

A Committee of Estate can also be appointed by Supreme Court order to make financial or legal decisions for the adult. A private citizen, trust company or the PGTBC can be appointed to act as Committee of Estate.

A Committee of Person can only be appointed through the Supreme Court process.

2.4 Committee of Estate: Scope of Authority

Regardless of who is appointed or how they are appointed, a Committee of Estate only has the authority to address:

financial management (pay bills, secure property)
legal representation (as client's funds permit)

Being a Committee of Estate does not provide the authority to make the following decisions:

facility admission decisions
health care decisions
decisions to restrict access to the adult by others

3. Guiding Principles For Issuing Certificates Of Incapability

The guiding principles for conducting assessments for the purpose of issuing a Certificate of Incapability under the *Patients Property Act* have been influenced by and closely parallel the Guiding Principles for Incapability Assessments under the *Adult Guardianship Act* Part 3: Support and Assistance for Abused and Neglected Adults.

Guiding Principles for the Certification Process

Incapability assessments are undertaken only as a last resort.

An adult has the right to be informed of the intention to conduct an incapability assessment and to be provided with the outcome of the assessment. Only in cases where this information would be injurious to the adult, is this information withheld.

Incapability assessments are unnecessary if there are alternate ways of adequately meeting the adult's needs.

Incapability assessments are undertaken only if the assessment will serve the interests of the adult.

Incapability assessments begin with the presumption that the adult is capable of making decisions.

An incapability assessment is a process, conducted by a team, in consultation with the adult and those who are supportive of the adult.

Incapability assessments are concerned solely with the adult's ability to manage their financial and legal affairs.

Incapability assessments are conducted fairly, and demonstrate respect for the adult.

Incapability assessors respect and protect the adult's privacy, self-esteem and well being.

A determination of incapability does not automatically mean a Certificate of Incapability should be issued.

A Certificate of Incapability is only issued as a last resort when the adult needs the Public Guardian and Trustee, as Committee of Estate, to protect and manage his or her financial and legal affairs.

4. The Role Of The Public Guardian And Trustee Of BC

When there are concerns about a possibly incapable adult, the Public Guardian and Trustee of BC (PGTBC) may be able to assist (See the flow chart in Appendix 10.1). Within the Services to Adults Division, the Assessment and Investigation Services (AIS) department receives referrals and reviews allegations of abuse, neglect or self-neglect of vulnerable adults in the community to determine whether a formal legal authority is required or an existing authority needs to be removed. For a list of the various types of legal authorities, see Appendix 10.3.

The Public Guardian and Trustee has legislated authority to investigate financial mismanagement or abuse and has powers to safeguard the adult's assets in urgent or emergency situations. The Public Guardian and Trustee has a responsibility to protect the rights of vulnerable adults and ensure these rights are only removed as a last resort.

4.1 Referrals to Assessment and Investigation Services (AIS)

Referrals may be made by phoning regional AIS staff or by forwarding the **Public Guardian and Trustee Referral Form** (See Appendix 10.4). Staff completing this form can assist AIS in their work by completing this form as fully as possible. (See appendix 10.15 for contact numbers).

When AIS receives a referral, staff consider the adult's situation to determine the least intrusive, most effective resolution. AIS is available to consult and may assist in reviewing informal resolutions and options as well as available community resources.

Further inquiry by AIS is warranted when there is:

- a concern about the mental incapability of the adult
- a specific urgent or immediate need
- no other person suitable to act on the adult's behalf.

Role of AIS at the PGTBC

- Suggests informal resolution and other legal options
- Investigates concerns about financial abuse, neglect or self-neglect
- Decides whether to seek a formal legal authority as a last resort

If, when looking into the situation, concerns about the adult are confirmed and informal resolutions are not possible, AIS may request a medical opinion of the adult's incapability to manage his or her financial and legal affairs. If the adult does not have a family doctor, AIS will contact Continuing Care or Mental Health to assist in arranging for a medical opinion on incapability. The Family physician is asked to provide their opinion on incapability using the **Physician's Opinion of Incapability Form** (see Appendix 10.5). For more details about conducting assessments see Appendix 10.14 for an article entitled "Financial and Competency Assessments for British Columbia Seniors".

NOTE: The Physician's "opinion" does not constitute a formal declaration of incapability.

If the family physician is of the opinion the adult is incapable of managing his or her financial or legal affairs, AIS may proceed with an investigation to collect further information about the adult's personal and financial situation.

After the information about the adult has been collected, AIS reviews the alternatives and decides whether the PGTBC should seek a formal legal authority. A certificate

under the *Patients Property Act* is pursued by the PGTBC only if there is no one else to assist the adult. In these situations, AIS contacts the appropriate mental health facility or hospital psychiatric unit, asks for an assessment for the purpose of determining whether the adult would be deemed incapable under the *Patients Property Act* and forwards all relevant information.

AIS also plays a critical role within the Services to Adults Division by identifying assets, property, bank accounts, legal issues, as well as all the key stakeholders early in the process. The opportunity to do this helps to ensure that the Case Manager in the Client Services department who receives the adult's file can act swiftly and efficiently once the PGTBC is appointed committee.

5. The Role Of The Mental Health Facility Or Hospital Psychiatric Unit

Upon being contacted by AIS, the mental health facility or hospital psychiatric unit team takes on the responsibility for the assessment and assigns the assessment team based on the adult's personal situation (See the flow chart in Appendix 10.2). Members of the assessment team may include a psychiatrist, general practitioner, psychologist, nurse, social worker, occupational therapist or continuing care case manager.

The team in receipt of the **Physician's Opinion of Incapability Form** may decide that another medical opinion is required. The assessment team informs the adult of the intention to do an incapability assessment, the outcome of the assessment, and involves the adult in the overall process. Notification is only waived if the information or involvement would be seriously injurious to the adult's health and well-being.

Role of the Assessment Team

Notifies the adult of the assessment

Conducts the assessment

Completes the **Functional & Decision Making Assessment Form**

Consults with the Director who decides whether to issue a Certificate of Incapability

5.1 Purpose of the Assessment

The purpose of the assessment is to determine whether a certificate under the *Patients Property Act* should be issued. The assessors base the decision on whether the adult:

a) is mentally infirm because of disease, age or otherwise; **and**

b) as a consequence is incapable of managing his or her financial affairs; **and**

c) there is a need for the Public Guardian and Trustee to act as Committee of Estate.

The **Physician's Opinion of Incapability** that AIS forwards to the team determines whether the adult is mentally infirm. The assessment team uses the **Functional and Decision Making Assessment Form** (see Appendix 10.6) to determine whether the adult is incapable of managing his or her financial affairs. The Assessment Team **and** AIS together make a determination of whether the adult needs the Public Guardian and Trustee to act as Committee of Estate.

5.2 Addressing Communication Needs

The assessment team addresses any communication issues ***prior*** to the beginning of the assessment process and any that arise once it is underway.

The assessment team considers the adult's mode of communication and determines whether:

- an interpreter is required
- the adult uses sign language
- the adult uses alternate or augmentative communication
- supportive family, friends or caregivers are available to communicate with the adult.

The team communicates with the adult in a manner appropriate to the adult's skills and abilities. Assessors keep in mind that the adult may be reluctant to ask questions or ask for clarification. It must also be noted that the backgrounds of the adult and the assessor may affect communication. Being aware of these issues and taking steps to enhance communication practices will decrease the possibility of miscommunication.

> One way to enhance the adult's communication is to involve supportive family and friends, including advocates.

5.3 Doing the Assessment if the Adult Objects

If the adult consistently objects to the assessment, the assessment team can conduct the assessment as long as it can be accurately completed using observational and collateral information. The team documents any objections raised by the adult and the context in which the objections were raised.

Observational information is the information gathered about the adult as observed by the assessment team from the moment of the first contact.

Care is taken to ensure that sufficient information is collected on which to base a finding. It is important to document the source of the collateral information, along with what is said. Collateral information may be gathered from people who had recent and regular contact with the adult, such as:

- apartment building managers
- neighbours
- staff in stores where the adult frequently shops
- financial institutions
- spouse
- relatives
- friends
- advocates
- service providers.

Assessors gather relevant collateral information about the adult regarding such things as:

- behaviours or habits
- general appearance and overall health status
- typical social patterns
- living conditions
- any changes regarding the above.

6. THE ROLE OF THE DIRECTOR

The Director of the mental health facility or psychiatric unit is responsible for making the decision to issue a Certificate of Incapability. The Director reviews all the relevant information, and in consultation with the assessment team, makes the decision whether a Certificate of Incapability is warranted. As a guideline for making this decision, the Director completes the **Certificate of Incapability Determination Checklist** (Appendix 10.9).

Role of the Director

- Uses the checklist to review assessment information
- Ensures consultation with AIS at the PGTBC has occurred
- In consultation with team, decides whether to issue a Certificate of Incapability
- Ensures notification
- Ensures validity of certificate

The Director then sends the notification letter to the adult informing them that he or she has been assessed and that the Director **intends** to issue a Certificate of Incapability appointing the Public Guardian and Trustee as Committee of Estate subject to any further information the adult may wish to provide.

Family members may also be notified if appropriate. The Director determines which family members are the most involved and who should receive notification. The Director has the authority to elect not to send a notification letter or the certificate, but exercises this authority only in circumstances where this would be injurious to the health of the adult or family. The sample notification letters (see Appendices 10.7 and 10.8) indicate a 10-day waiting period which can be shortened at the Director's discretion, depending on the urgency of the situation. A **Summary of the Assessment** (see Appendix 10.10) is attached to the letter.

After the waiting period, the Director issues the Certificate of Incapability and immediately faxes a copy to AIS at the PGTBC prior to mailing the original. A copy should also be sent to the adult (and family if appropriate), and the PGTBC informed if a decision is made not to copy the adult and/or family.

6.1 Validity of the Certificate

To ensure that the certificate will be considered valid and acceptable to financial institutions and the Land Titles Office, it must:

- be accurately dated
- include the adult's full legal name (and correct spelling)
- include the adult's exact birthdate
- be signed at the bottom by the "Director" (i.e., not "Acting" Director, or other title)
- preferably be on the letterhead of the issuing agency

The PGTBC will request that the certificate be re-issued if it appears to be of questionable validity. (See Appendix 10.11 for a sample certificate.)

7. Emergency Situations

In an emergency situation when the adult's assets are at risk and there is reason to believe that the adult is incapable of managing his or her legal and financial affairs, mental health teams and hospital psychiatric units contact AIS directly by phone. AIS may use the PGT's protective powers to temporarily safeguard the adult's assets until a permanent solution is put in place.

AIS and the mental health or hospital psychiatric unit teams work together in these situations to expedite the process and, at the same time, ensure that a reasonable investigation and assessment process is undertaken. For example, the adult and their family **may be** notified by phone rather than by mail of the intention to conduct an assessment and to issue a certificate.

8. Ending The Authority Of The Public Guardian And Trustee

The authority of the Public Guardian and Trustee ends in the following situations:

a) the adult is declared capable by certificate or court order – for a sample, see Appendix 10.12

b) the adult is "discharged" as per s.11(1)(a) of the *Patients Property Act* at the PGTBC's discretion – for a sample, see Appendix 10.13

c) a Private Committee is appointed by Supreme Court Order, or

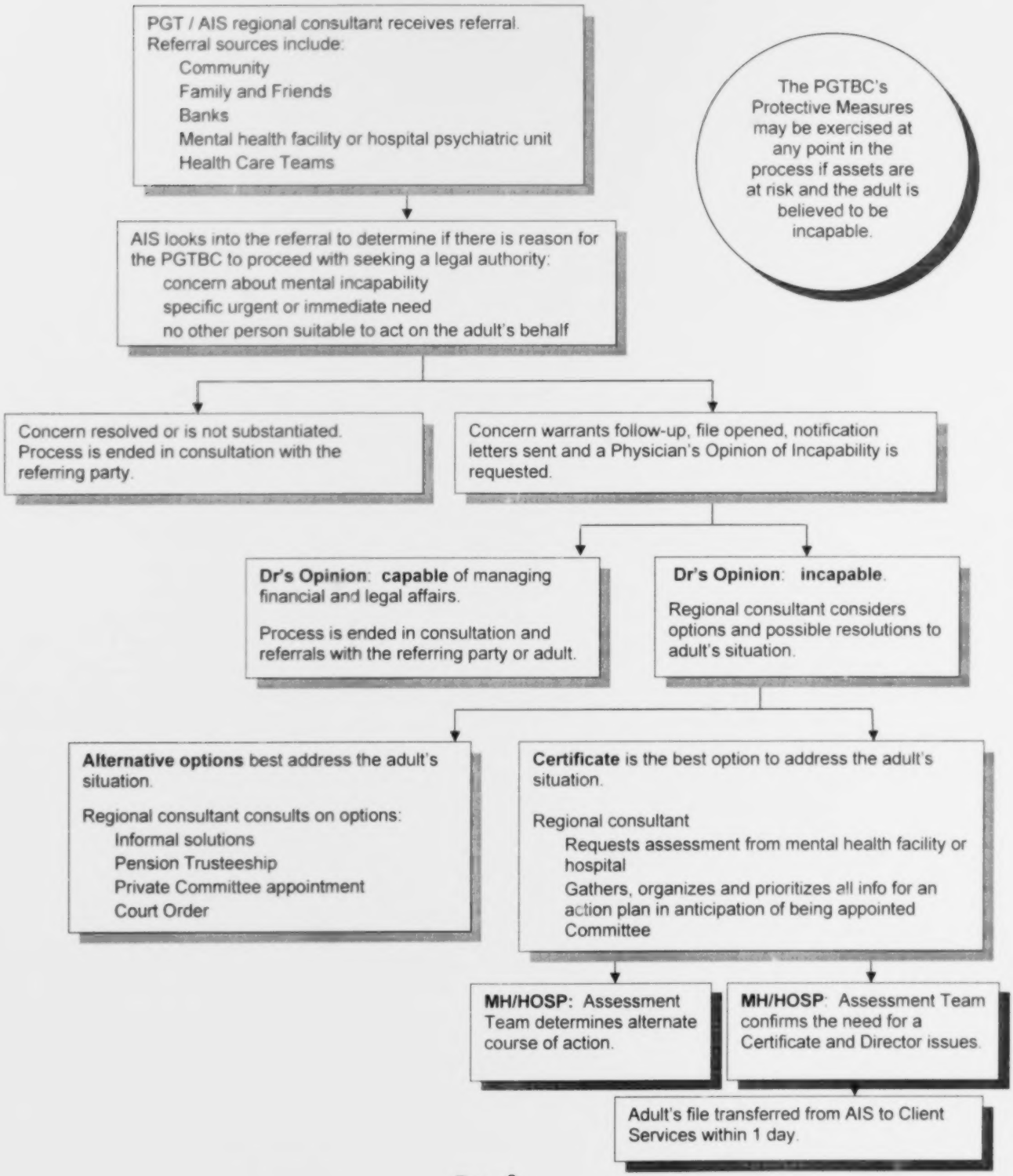
d) there has been a previous appointment of an Attorney under a Power of Attorney or a Representative under the *Representation Agreement Act* and the Public Guardian and Trustee exercises his discretion to end his authority as Committee.

9. Reassessment Upon Request By The Adult

An adult may ask for a reassessment for the purpose of being declared no longer incapable of managing his or her own affairs. When a reassessment is requested, the mental health facility or psychiatric unit may contact the PGTBC for any background material. The PGTBC will facilitate reassessment upon request by the adult in the event circumstances have changed or where more than 6 months have elapsed since the last reassessment.

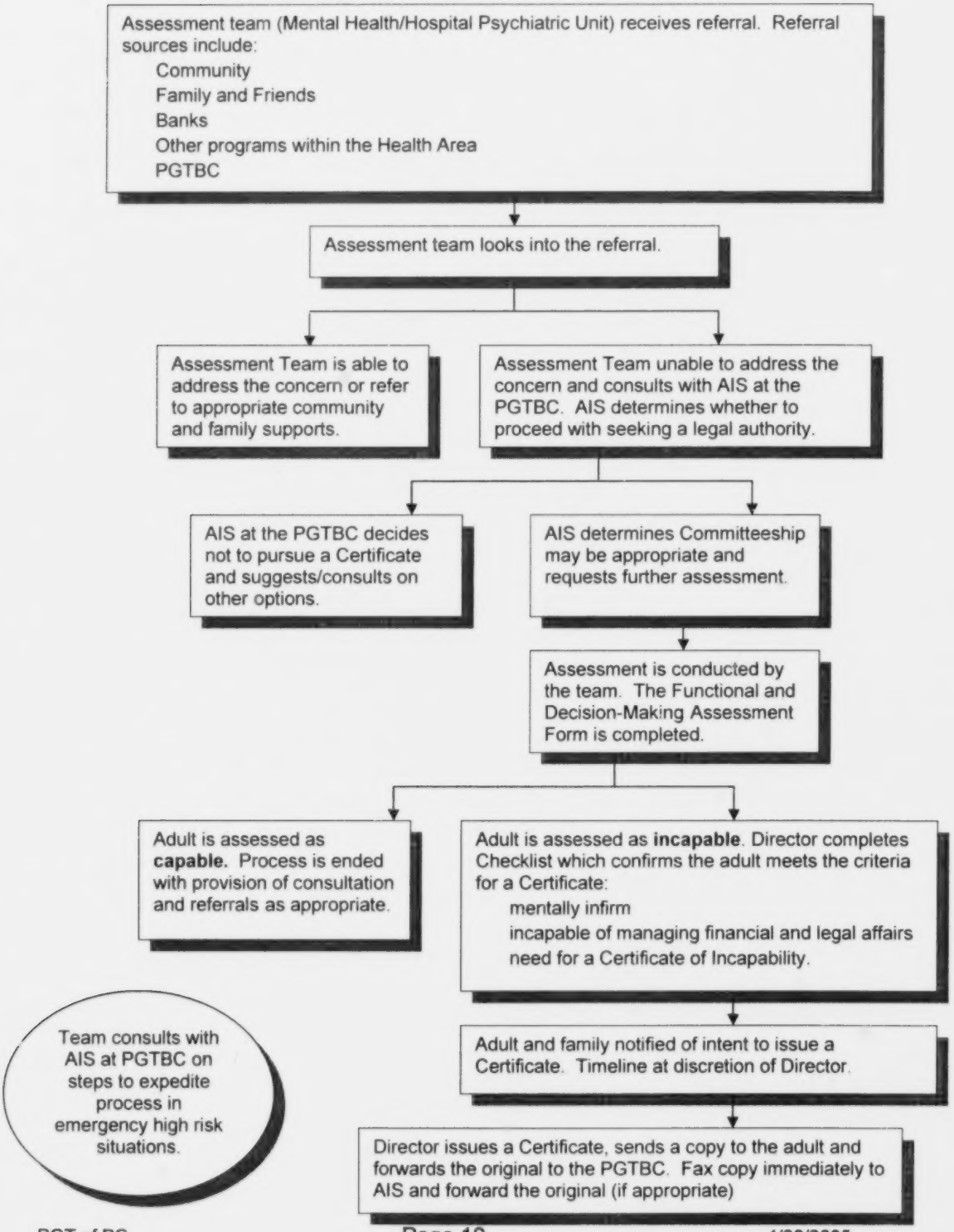
10. Appendices

ISSUING A CERTIFICATE OF INCAPABILITY
Role of the Public Guardian and Trustee


PGT / AIS regional consultant receives referral.
Referral sources include:
Community
Family and Friends
Banks
Mental health facility or hospital psychiatric unit
Health Care Teams
The PGTBC's Protective Measures may be exercised at any point in the process if assets are at risk and the adult is believed to be incapable.
AIS looks into the referral to determine if there is reason for the PGTBC to proceed with seeking a legal authority:
concern about mental incapability
specific urgent or immediate need
no other person suitable to act on the adult's behalf
Concern resolved or is not substantiated. Process is ended in consultation with the referring party.
Concern warrants follow-up, file opened, notification letters sent and a Physician's Opinion of Incapability is requested.
Dr's Opinion: capable of managing financial and legal affairs.
Process is ended in consultation and referrals with the referring party or adult.
Dr's Opinion: incapable.
Regional consultant considers options and possible resolutions to adult's situation.
Alternative options best address the adult's situation.
Regional consultant consults on options:
Informal solutions
Pension Trusteeship
Private Committee appointment
Court Order
Certificate is the best option to address the adult's situation.
Regional consultant
Requests assessment from mental health facility or hospital
Gathers, organizes and prioritizes all info for an action plan in anticipation of being appointed Committee
MH/HOSP: Assessment Team determines alternate course of action.
MH/HOSP: Assessment Team confirms the need for a Certificate and Director issues.
Adult's file transferred from AIS to Client Services within 1 day.

ISSUING A CERTIFICATE OF INCAPABILITY

Role of Mental Health Team / Hospital Psychiatric Unit


Assessment team (Mental Health/Hospital Psychiatric Unit) receives referral. Referral sources include:
Community
Family and Friends
Banks
Other programs within the Health Area
PGTBC
Assessment team looks into the referral.
Assessment Team is able to address the concern or refer to appropriate community and family supports.
Assessment Team unable to address the concern and consults with AIS at the PGTBC. AIS determines whether to proceed with seeking a legal authority.
AIS at the PGTBC decides not to pursue a Certificate and suggests/consults on other options.
AIS determines Committeeship may be appropriate and requests further assessment.
Assessment is conducted by the team. The Functional and Decision-Making Assessment Form is completed.
Adult is assessed as capable. Process is ended with provision of consultation and referrals as appropriate.
Adult is assessed as incapable. Director completes Checklist which confirms the adult meets the criteria for a Certificate:
mentally infirm
incapable of managing financial and legal affairs
need for a Certificate of Incapability.
Team consults with AIS at PGTBC on steps to expedite process in emergency high risk situations.
Adult and family notified of intent to issue a Certificate. Timeline at discretion of Director.
Director issues a Certificate, sends a copy to the adult and forwards the original to the PGTBC. Fax copy immediately to AIS and forward the original (if appropriate)

OPTIONS TO CONSIDER

When an individual has Difficulties Managing Their Financial, Legal, or Personal Affairs

TERM	MECHANISM	PROCESS	WHO BECOMES SUBSTITUTE DECISIONS MAKER	POWERS GRANTED	MENTAL CAPABILITY OF THE INDIVIDUAL
Informal Resolution	N/A	N/A	N/A	Examples: -Direct Deposit or Payment -Retirement Planning -Community Supports -Income Tax Clinics	Assume Capability
Power of Attorney	Grant of Power of Attorney	Capable Person signs a document with witnesses	Any capable adult – family, friends, trust company, and only in exceptional circumstances, the Public Guardian and Trustee	The individual directs on legal or financial decisions. Powers can be either general or specific. Enduring clause allows Power of Attorney to act if donor becomes incapable	Capable
Representation Agreements	Representation Agreement Act	Adult creates individual agreement. Witnessing is done in required format	Any capable adult – family, friends, trust company, and in limited circumstances, the Public Guardian and Trustee, for finances only	Depending on type and scope of agreement, representative may be authorized to make financial, legal or personal decisions when adult is no longer able to	Contractual capacity for Section 9 agreement Broad capability for Section 7 agreements
Pension Trusteeship	Federal Income Security Programs – standard form	One physician signs form and applicant sends to ISP	Any capable adult – family,friends, Public Guardian and Trustee	Trustee can manage monies paid through OAS/GIS/CPP Only. A trustee cannot manage any other income or assets	Incapable
Committee of Estate	Certificate of Incapability (Patients Property Act)	Certificate is signed by a Director of a Mental Health Facility	Public Guardian and Trustee only	The Public Guardian and Trustee has full responsibility for the legal & financial affairs of the individual	Incapable of managing financial & legal affairs
Committee of Estate	Court Order (Patients Property Act)	Two physician's opinions and a court hearing	Any capable adult – family, friends, trust company, Public Guardian and Trustee	The committee has full responsibility for the financial and legal affairs of the individual and is accountable to the Public Guardian and Trustee	Incapable of managing financial & legal affairs
Committee of Person	Court Order (Patients Property Act)	Two physicians' opinions and a court hearing	Any capable adult (recommend family or close friend)	The Committee makes decisions regarding both care and treatment, and facility placement	Incapable of making personal decisions
Mental Health Committal	Certificate under Mental Health Act	One medical cert. for admittance; two certs. for committal to psychiatric facility	Director of a designated facility makes treatment and placement decisions relating to psychiatric diagnosis	Involuntary committal for psychiatric treatment-time limited	Incapable

PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

REFERRAL FORM
Services to Adults

The information on this form is collected under the authority of the *Public Guardian and Trustee Act*. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Committee of Estate through Certificate or Court Order under the *Patient's Property Act*. If you have questions about the collection and use of this information, please contact Assessment & Investigation Services.

Referral Criteria:
It is appropriate to refer an individual (over the age of 19 years) to the Public Guardian and Trustee of British Columbia if there is:

a) a concern about the individual's mental capability to manage financial and legal affairs,

b) if there is a specific, urgent or immediate need, and

c) if no other suitable person (family or friend) has the authority or is willing and able to act on the individual's behalf.

SECTION ONE: PERSONAL INFORMATION

Name: Surname First Name Middle Name	
Maiden Name (if applicable):	
Present Location and Address: Apartment / Street Number Street City Postal Code	
Primary Residence (if different from above): Apartment / Street Number Street City Postal Code	
Date of Hospital or Facility Admission:	Telephone:
Date of Birth:	Fax:
Marital Status: Single / Married / Separated / Divorced / Common-law	Gender: ☐ Male ☐ Female
Social Insurance Number:	Old Age Security Number:
Citizenship	Veterans Service Number:
Personal Health Number:	Language/Communication Method if other than English:
Religion (if applicable):	Place of Birth:

SECTION TWO: REASONS FOR REFERRAL

Is this an urgent Referral?

☐ Yes

☐ No

Why? _____

_____

How are the adult's financial and legal affairs presently being managed?

☐ Self	☐ Government Pension Trusteeship	☐ Family
☐ Power of Attorney	☐ Committeeship	☐ Other
	☐ Representation Agreement	☐ Uncertain

Why is the appointment of the Public Guardian and Trustee necessary to manage the adult's legal or financial affairs? Describe the problem(s) that the adult needs assistance in resolving.

_____

_____

_____

_____

_____

_____

Why do you think this person is unable to make decisions or resolve the problem(s) described previously?

_____

_____

_____

_____

_____

_____

Physicians Name:	
Address:	
Telephone:	Fax:
Continuing Care Case Manager / Care Coordinator Name Telephone	
Is the adult aware of this referral: ☐ Yes ☐ No Unsure	
If yes, what is the adult's response?	

SECTION THREE: FINANCIAL INFORMATION:

Income:

☐ OAS ☐ GAIN

☐ GIS ☐ DVA

☐ CPP ☐ Private Pension/Type: _____

Bank Location:
Personal Property:
Real Property and Vehicles:
Is the property insured? ☐ Yes ☐ No
Name of the Insurance Company:

SECTION FOUR: FAMILY OR OTHER CONTACT PERSONS:

Name Address Province Postal Code Telephone Relationship	Name Address Province Postal Code Telephone Relationship
Name Address Province Postal Code Telephone Relationship	Name Address Province Postal Code Telephone Relationship

Have involved family members/friends been notified about this referral?
Yes / No (please circle one)

If not, why:_____

SECTION FIVE: REFFERAL SOURCE

Referred by:			
Date of referral:			
Relationship to the Adult being referred			
Telephone Number			
Address: Apartment / Street Number	Street	City	Postal Code

Please attach any other relevant comments and information and mail this form to:

Greater Vancouver Region
700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: (604) 775-1007
Fax : (604) 660-9498

Vancouver, North Shore, Richmond, Delta, Sunshine Coast

Lower Mainland Region
700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: (604) 775-1001
Fax: (604) 660-9479

Burnaby, Tri-Cities, North Fraser and Fraser Valley

Vancouver Island Region
1019 Wharf St., 4th floor
Victoria, BC V8W 9J2
Tel: (250) 356-8160
Fax: (250) 356-7442

Vancouver Island, Powell River and Gulf Islands

Interior-North Region
1345 St. Paul St.
Kelowna, BC V1Y 2E2
Tel: (250) 712-7576
Fax: (250) 712-7578

Interior and Northern BC, east and north of Hope

Enquiry BC Toll Free Number: 1-800-663-7867

PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

PHYSICIAN OPINION OF INCAPABILITY UNDER THE *PATIENTS PROPERTY ACT*

The information on this form is collected under the authority of the *Public Guardian and Trustee Act*. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Committee of Estate through Certificate or Court Order under the *Patients Property Act*. If you have any questions about the collection and use of this information, please contact Assessment and Investigation Services (AIS).

Directions to the Physician:

This assessment is to be performed by a general practitioner or psychiatrist. It is designed to obtain information on whether there is a mental disability that affects the adult's ability to make decisions. If you need more space for answers, attach additional sheets and/or a copy of your assessment report. Upon completion you may send a copy to the adult, as well as AIS at the PGT.

1. Adult's Personal Information

Name of the adult being assessed: Last Name First Name Initial	
Date of Birth: Month Day Year	For approximately how long have you been treating the adult?
When did you last examine the adult? Date:	Where did the last examination take place? Place:
Do you anticipate seeing the adult again? ☐ Yes ☐ No	If Yes, when will you next see the adult?

3. Mental Status

Mental status evaluation to be based on a direct examination of the adult:

Was the Folstein's Mini Mental Status Examination given?

☐ Yes Adult's Score _____/30

☐ No

If a MMS was not conducted, what other tests or questions were asked of the adult regarding ability to manage financial and legal affairs (and/or person if applicable) and what responses did the adult give. Attach additional sheets if needed.

Was the adult able to follow simple directions / instructions:

☐ Yes

☐ No

Was the adult oriented to time and place?

☐ Yes

☐ No

How would you describe the adult's short term memory?

4. Mental Health Status (adapted from the LTC1)

Attitude	Self-Direction	Affect	Thought Content
☐ Cooperative	☐ Independent	☐ Appropriate	☐ Normal
☐ Indifferent	☐ Needs motivation	☐ Anxious	☐ Delusions
☐ Resistive	☐ Needs direction	☐ Euphoric	☐ Persecutory
☐ Demanding	☐ Dependent	☐ Labile	☐ Guilt
☐ Suspicious		☐ Angry	☐ Obsessions
☐ Hostile		☐ History of mood swings	☐ Phobias
		☐ Blunted	☐ Preoccupation
		☐ Depressed	☐ Other
		☐ Inappropriate	☐ Not able to assess
		☐ Other	

Perceptions	Cognition	Insight	Judgement	Other
☐ Normal	☐ Normal	☐ Good	☐ Good	☐
☐ Hallucinations	☐ Impairment	☐ Partial	☐ Adequate	☐
☐ Auditory	☐ Mild	☐ None	☐ Poor	☐
☐ Visual	☐ Moderate			
☐ Other	☐ Severe			

5. Communication Skills

Comment on responsiveness, vocabulary loss etc.:

6. Medical and Psychiatric Diagnoses

Medical Diagnoses:

Psychiatric History:

Psychiatric Diagnoses:
Prognosis:

7. Functional Status

Is the adult able to perform simple financial transactions?	☐ Yes	☐ No
Is the adult aware of the nature and extent of his/her finances?	☐ Yes	☐ No
Is the adult able to do his or her own banking?	☐ Yes	☐ No
Is the adult able to do his or her own shopping?	☐ Yes	☐ No
Is the adult able to carry out other activities of daily living?	☐ Yes	☐ No

If no, please provide examples of activities the adult cannot carry out.

8. Statement of Opinion of Capability to Manage Legal or Financial Affairs

In your opinion (check one):

☐ The adult is **capable** of managing his or her own financial or legal affairs, or

☐ The adult has a mental disorder / disability that renders him / her **incapable** of making decisions regarding financial or legal affairs, **or**

☐ I am unable to provide an opinion based on available information and recommend further assessment.

Prognosis: Is the adult's ability to manage his or her affairs likely to improve?
Other Comments:

9. Notification

(Note: a copy of this form may be shared with the adult)

Has the adult been notified of this assessment?

☐ Yes

☐ No

If no, why not?

If the adult has been assessed as incapable of managing financial and legal affairs, please complete the following:

In your opinion would it be injurious to the health of the adult to serve him or her with copies of all the documents relating to the application to appoint a Committee?

☐ Yes

☐ No

If yes, please provide an explanation.

Name of Physician (please print)

Dr._____

Last Name First Name Initial

Signature: _____

Date: _____

Telephone Number: _____ Fax Number: _____

Return this form to:

Greater Vancouver Region
700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: (604) 775-1007
Fax : (604) 660-9498

Vancouver, North Shore, Richmond, Delta, Sunshine Coast

Lower Mainland Region
700-808 West Hastings St.
Vancouver, BC V6C 3L3
Tel: (604) 775-1001
Fax: (604) 660-9479

Burnaby, Tri-Cities, North Fraser and Fraser Valley

Vancouver Island Region
1019 Wharf St., 4th floor
Victoria, BC V8W 9J2
Tel: (250) 356-8160
Fax: (250) 356-7442

Vancouver Island, Powell River and Gulf Islands

Interior-North Region
1345 St. Paul St.
Kelowna, BC V1Y 2E2
Tel: (250) 712-7576
Fax: (250) 712-7578

Interior and Northern BC, east and north of Hope

Enquiry BC Toll Free Number: 1-800-663-7867

FUNCTIONAL AND DECISION-MAKING ASSESSMENT FORM UNDER THE *PATIENTS PROPERTY ACT* 10.6

The information on this form is collected under the authority of the *Public Guardian and Trustee Act*. Information collected may be used for the purpose of authorizing the Public Guardian and Trustee to act as Committee of Estate through Certificate or Court Order under the *Patients Property Act*. If you have any questions about the collection and use of this information, please contact Assessment and Investigation Services in your region.

Directions to the Assessor

This assessment may be performed by a clinician or professional health care worker who is an experienced assessor and who has a reasonable rapport with the client. The goal of assessment is to obtain information on the capacities of the person to manage their financial and legal affairs. Please review all referral and available collateral information. If you need more space for answers, attach additional sheets.

SECTION ONE: Assessment Information

Name of the Adult: Last Name First Name Middle Initial	Adult's Date of Birth: Year / Month / Day
Location of the Assessment:	Date of the Assessment: Year / Month / Day

Assessor / Assessment Team Information:

Name	Agency	Position	Contact Information
			Phone: Fax: Email:
			Phone: Fax: Email:

Please list the standards, tools or tests you used as part of this assessment and attach a copy of your assessment report.

Assessment Report Attached?

☐ Yes

☐ No

SECTION TWO: Communication

Does the adult speak and understand English? ☐ Yes ☐ No	If no, with what language or form of communication is the adult most comfortable?
Does the adult require communication supports? ☐ Yes ☐ No	If yes, what communication supports are required?
If someone who assists with communication is available, please include the name and phone number.	

SECTION THREE: Understanding of the Problem

Briefly describe the problem:
How long has the problem existed?
Briefly describe the adult's understanding of the problem. Does the adult understand why he or she is being assessed?
If the adult does not understand, what appears to be preventing understanding?
If the adult expresses understanding, does the adult have suggestions for handling this problem? Are these ideas reasonable considering the problem?

SECTION FOUR: Collateral Information Sources Relevant to the Assessment of Incapability

Please add any new or additional contact information to the Referral Form or attach on a separate piece of paper.

Who are the people available to the adult?

☐ Spouse	☐ Other Relatives	☐ Banker
☐ Children	☐ Friends	☐ Lawyer
☐ Parent	☐ Others	☐ Health Care Worker

Of the people available to the adult, who was contacted for collateral information and why?
Of the people available to the adult, who was not contacted for collateral information and why?
What information was gained through the collection of collateral information in regard to the assessment and potential need for a Certificate? Be specific.
Is more collateral information needed? If so, what collateral information is required?

SECTION FIVE: Understanding of Financial and Legal Affairs

Use the following questions as a guide to determine the financial situation of the adult and the adult's functional ability to manage his/her financial and legal affairs. In your assessment report, please record the adult's response, information collected from collateral sources and your opinion. Use the chart below to summarize your concerns.

Items to be explored with the adult and collateral information sources	Assessor's concerns
1. Do you know your income and its sources?	
2. Do you know what regular bills you need to pay?	
3. Do you have any debt?	
4. Do you have any assets?	
5. Do you have investments or property?	
6. Have you ever needed the help of a lawyer? When and for what?	
7. Do you have a Power of Attorney or is anyone else helping you manage your money?	
8. Do you have a will?	
9. Do you have a bank account? Is there anyone else on this account?	
10. Do you have a credit card?	
11. Do you have a pension from work?	
12. How do you get to the bank?	
13. Do you write cheques? Use a bank debit card?	
14. Do you ever run out of money for food or worry about your rent?	
15. Does your family/friend come to you for money?	
16. Do you keep money in your purse/wallet?	
17. Do you give money to charity?	

SECTION SIX: Summary

How was the adult notified of this assessment? ☐ Mail ☐ Phone ☐ In Person ☐ No Notification	If no notification, please explain.
Has the adult's ability to make decisions or problem solve become significantly worse when compared with his or her abilities in the past?	
Has the possibility for pension trusteeship, a Power of Attorney, a Representation Agreement or a Committeeship (as appropriate to the adult's capability) been discussed with the adult? Please give a summary of these discussions or reasons why this has not happened.	
Does the adult understand that the Public Guardian and Trustee may be appointed to manage his or her financial or legal affairs? ☐ Yes ☐ No	
Is there a discrepancy between the adult's answers and collateral information or your observations? ☐ Yes ☐ No If so, please describe:	

Has the adult expressed any wishes regarding who he or she would like to act as Committee?

☐ Yes

☐ No

Name of the person:

Relationship to the adult:

Reason why the adult would like this person to act as Committee:

Describe the plan in place to notify the adult of the outcome of the assessment.

SECTION SEVEN: Opinion - Assessment of Incapability

In your opinion (check one):

☐ The adult is **capable** of managing his or her own financial or legal affairs, **or**

☐ The adult has a mental disorder / disability that renders him / her **incapable** of making decisions regarding financial or legal affairs.

My opinion is based on the following (please check as appropriate):

☐ Referral information

☐ Functional and decision-making capacity assessment

☐ Medical and psychiatric assessments

☐ Collateral information

This opinion has been provided by:

Name / Signature	Agency	Position
Print Name Signature		
Print Name Signature		

Date: _____

SAMPLE CLIENT NOTIFICATION LETTER

File Number:

@ date

@ name
@ company
@ address
@ city
@ postal code

Dear (Adult):

Assessors met with you at ____ (location) on _____(date) because of concerns about your ability to manage your financial and legal affairs. Based on that assessment, it has been determined that you are incapable of managing your financial and legal affairs on your own, and that you are in need of support. A Summary of Assessment, which is a summary of the findings, is attached.

To get you the support you need, it is our intention to issue a Certificate of Incapability which will make the Public Guardian and Trustee of BC your Committee of Estate. As your Committee of Estate, the Public Guardian and Trustee will plan with you to best meet your financial and legal needs.

If you do not agree with my decision and have further information that should be taken into consideration, please contact me at _____ (contact phone number) by _____ (date). Otherwise I will issue the Certificate of Incapability on _____ (date).

Sincerely,

Signature of Director

SAMPLE FAMILY NOTIFICATION LETTER

File No. @file

@date

@name
@company
@address
@city
@postal code

Dear (Family Member):

Assessors met with your (relative, and the adult's name) at ____ (location) on _____(date) because of concerns about his/her ability to manage his/her financial and legal affairs. Based on that assessment, it has been determined that he/she is incapable of managing his/her financial and legal affairs on his/her own, and that he/she is in need of support. A Summary of Assessment, which is a summary of the findings, is attached.

To get (adult's name) the support he/she needs, it is our intention to issue a Certificate of Incapability which will make the Public Guardian and Trustee of BC his/her Committee of Estate. As Committee of Estate, the Public Guardian and Trustee will plan with (adult's name) to best meet his/her financial and legal needs.

If you do not agree with this decision and have further information that should be taken into consideration, please contact me at _____ (contact phone number) by _____ (date). Otherwise I will issue the Certificate of Incapability on _____ (date).

Sincerely,

Signature of Director

DIRECTOR'S CHECKLIST FOR ISSUING A CERTIFICATE OF INCAPABILITY UNDER THE *PATIENTS PROPERTY ACT*

Name of the Adult:			Adult's Date of Birth:
Last Name	First Name	Middle Initial	Year / Month / Day

This checklist is intended as a tool to assist the Director of a mental health facility or psychiatric unit when making a decision to issue a Certificate of Incapability under the *Patients Property Act*.

☐ The adult and family have been informed of the assessment and the outcome.

☐ Other least intrusive measures have been considered and found insufficient.

☐ The adult does not have an Attorney under a Power of Attorney or a Representative under the *Representation Agreement Act* who can appropriately assist.

☐ There is no one appropriate who can apply to court to be appointed as Private Committee.

☐ The Public Guardian and Trustee has been involved and is in agreement to issue a certificate.

☐ The following forms have been received and reviewed:

Public Guardian and Trustee Referral Form and any attached collateral information gathered by AIS
Physician's Opinion of Incapability and any attached assessment reports
Functional and Decision Making Assessment and any attached assessment reports

☐ The assessments consistently indicate that the adult is incapable of managing his or her own financial and legal affairs.

Decision of the Director

It is the conclusion of the Director that the assessment has found:

☐ The adult has a mental disorder / disability

☐ The adult is incapable of managing his /her financial and legal affairs

☐ The adult requires the PGT to act as Committee of Estate.

It is the decision of the Director to:

☐ Issue a Certificate of Incapability under the *Patients Property Act* following notification

☐ Not to issue of a Certificate of Incapability

Comments / Rationale for Decision:

Date for review of adult's incapability to make financial and legal decisions:

Name of Director | Signature | Date

SAMPLE SUMMARY OF ASSESSMENT

(Name of adult), born on (date of birth) was assessed to determine whether (he/she) is mentally incapable of managing (his/her) financial and legal affairs. The reason for the referral was (provide reason but no information to identify the parties who reported the concern).

An assessment of (name of adult)'s functional and decision-making capability was conducted by (name of assessor or team) on (date). The assessor is of the opinion that (state opinion and provide specific examples).

Dr. (name) (indicate general practitioner, psychiatrist or psychologist) examined (name of adult) on (date) and determined that (name of the adult) has a (description of medical condition) which affects his/her ability to manage his/her affairs.

_____ _____

Signature Date

[Issuing Agency's Letterhead]

SAMPLE CERTIFICATE OF INCAPABILITY

PROVINCE OF BRITISH COLUMBIA
CERTIFICATE OF INCAPABILITY
Issued Pursuant to Section 1(a) of the
Patients Property Act R.S.B.C.1996, Chapter 349

Date:

I, (name), Director of (name of mental health unit or psychiatric facility), hereby declare (full name of patient), born on (date of birth) to be incapable of managing (his/her) financial and legal affairs because of mental infirmity arising from (diagnosis).

I have reviewed an assessment of (name of patient) performed by (name/s of assessors) dated the (date/s). The assessment, found that (name of patient) is currently unable to manage (his/her) affairs. A summary of the assessment is attached to this certificate.

The effect of the issuance of this certificate is that the Public Guardian and Trustee British Columbia is appointed to act as Committee of Estate of (name of patient) pursuant to Section 6(3) of the *Patients Property Act* R.S.B.C., 1996, Chapter 349.

_____
Signature of Director

Name (Please Print)

[Issuing Agency's Letterhead]

SAMPLE CERTIFICATE OF CAPABILITY

PROVINCE OF BRITISH COLUMBIA
CERTIFICATE OF CAPABILITY
Issued pursuant to Section 11 (1) (d)
Patients Property Act R.S.B.C.1996, Chapter 349

Date:

I, (full name), Director of (mental health facility or psychiatric unit), hereby certify that I am of the opinion that (full name of adult) born on (date), is no longer incapable of managing his/her own affairs.

The effect of the issuance of this Certificate is that the Public Guardian and Trustee of British Columbia is no longer the Committee of Estate of (Name of Adult) by virtue of Section 11 (1)(d) of the *Patients Property Act*, R.S.B.C., 1996 Chapter 349.

_____ _____

Signature of Director

Name (please print)

[Issuing Agency's Letterhead]

PROVINCE OF BRITISH COLUMBIA
SAMPLE CONFIRMATION OF DISCHARGE

PROVINCE OF BRITISH COLUMBIA
CONFIRMATION OF DISCHARGE
Issued pursuant to Section 11 (1) (a) of the
Patients Property Act RSBC, Chapter 349, 1996

Date:

I, (full name) Director of (mental health facility or psychiatric unit) hereby confirm that (full name of adult, date of birth) has been discharged and is no longer a patient as defined under the *Mental Health Act* of this facility/unit.

The effect of the issuance of this confirmation is that the Public Guardian and Trustee may, at his discretion, decide not to continue to act as Committee of Estate for (name of adult) by virtue of section 11 (1) (a) of the *Patients Property Act* R.S.B.C. 1996, chapter 349.

_____
Signature of Director

Name (Please Print)

M. Donnelly, MD, CCFP, FRCP

FINANCIAL AND PERSONAL COMPETENCY ASSESSMENTS FOR BRITISH COLUMBIA SENIORS

The best standard of care that physicians can follow in assessing competency is to do a thorough assessment focusing on the patient's ability to function and addressing the patient's unique needs.

ABSTRACT: Physicians in British Columbia are asked to do competency assessments but are given few guidelines to direct them. This paper gives a suggested format to physicians for both doing and charting competency evaluations under the present or "old" legislation. The key variables to assess are patients' present functioning and ability to make decisions regarding relevant issues within their own unique environments. Collateral information is regarded as an essential part of any assessment, and collaboration with other health-care professionals may be required in order to conduct a thorough review.

New guardianship legislation has been defined in four new Acts. The Representation Agreement Act provides a legal mechanism for adults (19 years of age or older) to name, in advance, a representative to make decisions for them if they cannot. Agreement can be made to authorize personal, health-care, and/or legal and financial directives. Specific triggers will be personally defined to allow the representative to begin to act. Safeguards will be built into the Act to protect vulnerable adults from abuse. The Health Care Consent and Care Facility Admission Act defines new mechanisms for dealing with adults who lack the capacity to consent. This will include provision for Temporary Standard Decision Makers for major health-care procedures or admissions to care facilities. It will also create new Health Care Review Boards to rule on objections to decisions when patients are deemed incapable. The new Adult Guardianship Act defines processes for, first, reviewing an adult's needs and, second, assessing an adult's capability of making decisions around needs. This Act includes provision to deal with neglect and abuse. Finally, the Public Guardian and Trustee Act defines a new and expanded role for the Office of the Public Trustee. In creating these four new Acts, three guiding principles were followed.

1. Adults who are capable may accept or refuse support as they see fit.
2. Adults who need support should be treated in the most effective and least intrusive way possible.
3. Substitute decision makers should

Dr Donnelly is Mount Pleasant Legion Professor of Community Geriatrics in the Department of Family Practice at the University of British Columbia and clinical director of geriatric psychiatry at Vancouver Hospital and Health Sciences Centre.

not be named unless alternative supports have been tried or carefully considered.

It is expected that with implementation of the new legislation a clear new direction will be mandated. Until then, however, health-care professionals must work with the present laws (the Patient's Property Act and the Mental Health Act), which unfortunately do not define criteria for assessment of competency. Therefore, physicians are currently being asked to participate in legal competency assessments for older patients but are given few guidelines within which to work.

This paper briefly reviews some concepts from three publications that I have found useful in assisting me to direct competency assessments, discusses my own general principles for assessment, and outlines the types of questions I ask patients and their caregivers. These questions are included in a charting protocol that I recommend.

The procedures involved in the appointment of a committee under the Patient's Property Act of BC are well documented by McLellan et al.[1] A brief description of appropriate information for the medical affidavits is given, including date and place of examination, types of tests used and their results, diagnosis, prognosis, and a list of collateral informants and the information they provided. This paper also highlights the fact that physicians are asked to give only medical evidence toward a legal judgment. It is the director of a provincial mental-health unit or a judge in court who makes the final decision regarding the legal competency of the patient.

A position paper on financial and personal competency in the elderly was published by the Canadian Psychiatric Association (CPA) in 1989.[2] Guidelines are given regarding which issues should be assessed and which criteria should be considered in drawing final conclusions. It is emphasized that decisions regarding competency should be based on function, not diagnosis. A statement is made that the psychiatrist should, within the bounds of provincial law, "make recommendations which allow the patient to carry out life with the least restrictions possible". It is suggested that in the process of assessment the psychiatrist should consider whether or not the patient can safely manage at the poorest level of functioning when suffering from a condition that causes fluctuations in competency. This latter point is somewhat controversial. Consider the dilemmas involved in using this principle in the assessment of an alcoholic who functions well when sober but poorly when inebriated.

The paper recommends that, to be assessed as financially competent, patients need to "have realistic appreciation of their strengths and weaknesses, understand the nature of their assets and liabilities, have demonstrated ability to make sound decisions, use available resources appropriately and indicate a willingness to do so in the future". These abstract criteria would seem to have universal acceptability. However, in the final analysis, the decision depends on the thoroughness of the evaluation and the subjective conclusions of the evaluator. The subjectivity can be applauded for allowing for professional judgment to be exercised—or criticized for its potential for paternalism.

In a model written by Stephen Anderer, the standard for incompetency or incapacity is defined as a functional inability, as well as the inability to make or communicate decisions.[3] The inability to make or communicate decisions is caused by a demonstrated psychiatric or medical disorder or disability. Anderer believes a basic principle of competency is its inherent interactive nature. That is, the patient's external environment and changing personal skills influence capacity at any point in time. Thus the patient's use of resources, external and internal, should be considered in determining competency status.

In 1991, the BC Public Trustee's Office created an ad hoc multidisciplinary committee to draft a standardized financial competency assessment for the certificate process. The resulting assessment process was similar to the Anderer model. It was never formally mandated, but was piloted within the mental health system. The modification of this process, along with the CPA position paper criteria, forms the basis of my own approach to competency assessments and is also the approach that I recommend to colleagues. My approach involves two components: general principles and charting protocols.

> "The patient's external environment and changing personal skills influence capacity at any point in time. Thus the patient's use of resources, external and internal, should be considered in determining competency status."

General principles for assessment of competency

1. Find out if the patient has already named a general power of attorney with durability and if this alone might suffice, rather than requiring a committeeship of finance. If no power of attorney exists or if there is a concern that the power of attorney might not be appropriate, it is then wise to write down what the problem is as stated and to consider whether there is a less restrictive approach than committeeship that would help the patient. The same principle applies in assessing competency of person. Is there a way to help without a committee being appointed?

2. Do not rush to assess a patient unless a decision is needed to protect him or her immediately. Take the time to get a complete picture. Consider if the patient is acutely confused and if treatment of the confusion should be attempted before assessment of competency begins.

3. Maximize patient communication. Use professionally trained translators

PGT of BC Page 34 4/20/2005

when necessary. If the patient has a hearing aid, make sure it is working. When assessing writing skills, make certain that the patient can see what you are asking him or her to complete.

4. Interview the patient personally. Try to ensure that he or she is as comfortable as possible. This includes assessing the patient in a normal context, at home when appropriate. If the interview must be done in a hospital or clinic, assure patient privacy by using a quiet room apart from other people. If a caregiver is present, make certain the caregiver does not try to answer questions for the patient.

5. Assess the patient's strengths, not just weaknesses. The strengths may outweigh the weaknesses and tip the decision toward competency.

6. Remember that functioning is key. As with all geriatric care, it is not the diagnosis but the patient's functioning that is of greatest importance. Diagnosis is important here only in terms of prognosis with respect to functioning.

7. Look at a problem from more than one viewpoint. Collateral information is essential. Multiple opinions help to clarify the image and put it into a proper perspective. It is important to document who gives the collateral information, along with what is said.

8. If in doubt, ask for help. It may be impossible for a physician to give a clear opinion without assistance from other health-care professionals. At all stages of assessment, if questions arise that you are unsure of, ask for help. The Public Trustee's Office can be invaluable. At times, physician colleagues may help, either formally, by giving second opinions, or informally, by listening to a verbal case review and giving comments.

9. Hold high respect for the personal rights and value systems of the patient. Inform the patient in a simple, clear, nonthreatening way about the nature of the assessment and its conclusions. When a patient has difficulty expressing personal wishes now, search for what his or her wishes were in the past when the person was more independent. Try to include a statement about these in the final conclusions or special recommendations.

"As with all geriatric care, it is not the diagnosis but the functioning that is of greatest importance. Diagnosis is important here only in terms of prognosis with respect to functioning."

Suggested protocol for charting financial competency assessments

1. Kind of assessment
   State what kind of assessment this is (competency of finance or person or both).
2. Reason for referral
   State the problems that led to the referral and from whom the information was obtained.
3. Patient's reaction
   State briefly how the patient was informed about the nature of the assessment and what his or her response was.
4. Functional ability
   A. In the patient interview, ask about the following issues and chart answers.
   (i) What is your income?
   (ii) What are your assets? (property, bank accounts, investments)
   (iii) What are your expenses?
   (iv) Do you have debts?
   (v) Can you write a cheque? (Have the patient demonstrate this ability.)
   (vi) How do you pay your bills?
   (vii) Who, if anyone, helps with your finances? Whom do you trust and why? Who is available within your social network to help?
   (viii) What are your personal strengths?
   (ix) Do you have any legal actions that you are involved with at the present time?

   B. In collateral interviews, ask about the patient's history of functioning with respect to the same issues that the patient interview has enquired about. Always indicate the source of information.

   Summary of functional ability

   On the basis of the patient interview and collateral information, draw conclusions regarding the patient's present functional ability.
5. Decision-making ability
   A. In the patient interview, ask the patient about the following issues and chart answers.
   (i) Does the patient recognize financial problems and needs?
   (ii) Does the patient understand the nature of the problems that were noted on the referral? (Confront the patient directly about these with direct questioning, being careful not to be offensive. For example, if you know from collateral information that the patient has not been paying the rent but the patient does not mention this, say that you understand from information given to you that this is the case and you wonder if the patient can comment on this.)
   (iii) Does the patient know about potential solutions for problems or how to satisfy financial needs?
   (iv) Does the patient understand personal risks involved in financial management? Are there others at risk because of personal decisions regarding finances?
   (v) Does the patient ask for help? If not, why not?

   B. In collateral interviews, note collateral information regarding the patient's past recent history of ability

to make decisions and indicate from whom the collateral information was obtained.

Summary regarding decision-making ability

From information obtained in both patient interviews and from collateral sources, comment on the nature or quality of decision-making that the patient has been demonstrating.

6. Medical/psychiatric evaluation
   Document a general medical psychiatric review including the following:
   (i) relevant personal history
   (ii) relevant medical and psychiatric history
   (iii) communication skills with respect to hearing, seeing, reading, and writing
   (iv) a complete mental status examination including appearance, behavior, mood, thought process, thought content, perception, and a standardized cognitive assessment (e.g., Folstein Mini-Mental Status Examination). Add comments regarding specific mental-status abnormalities or strengths that are relevant to functioning in a competent fashion. Orientation and memory are particularly important variables. Delusions may or may not interfere with competency, depending on their relation to specific decisions made.
   (v) psychiatric diagnoses and medical diagnoses
   (vi) a brief statement of relevant medical-care needs
   (vii) prognosis with respect to psychiatric and medical problems in terms of effects on overall functioning, with and without treatment
7. Final opinion
   Based on the evidence from the assessment and using the CPA criteria, state your opinion with respect to the patient's competency status. Give a simple explanation of how you came to that conclusion. Include a statement regarding your prognosis for competency in the future based on your prognosis for the patient's diagnosis.
8. Special recommendations
   State any special recommendations based on the assessment. This may include such things as early review because the patient's prognosis may be one of improvement, or special concerns regarding family conflicts that might interfere with family assistance.

Suggested protocol for charting personal competency assessments

Managing one's person is an even more complicated and vague concept than managing one's finances. It refers to making decisions about personal welfare and living circumstances. This may include planning for health-care needs, choosing a place to live and with whom to associate, providing for personal nourishment, and ensuring personal safety. Unfortunately, in BC, there is at present no legal definition of partial or specific competencies with respect to personal decisions. Personal competency is given a global definition.

> "Assess the patient's strengths, not just weaknesses. The strengths may outweigh the weaknesses and tip the decision toward competency."

In doing personal competency assessments, follow the same kind of general principles and charting protocol described for financial competency assessments. Revise the questions regarding functioning according to personal decision-making issues. Ask about:

(i) food shopping, food preservation, and cooking
(ii) what medications the patient is taking or what medical treatments are required and how these are arranged. Ask the names of physicians involved in care.
(iii) where the patient wishes to live now and in the future and why. Is the present housing situation adequate for needs?
(iv) what assistance the patient requires to carry out basic activities of daily living including personal hygiene, dressing, ambulation, nutrition, housekeeping, medical and transportation needs
(v) personal safety issues, recognition of hazards, and handling of simple problems

When reviewing the patient's decision-making abilities, ask directly about the problems noted on the referral and then focus on these problems to ask what the patient needs. Does the patient understand risks and alternatives? Does the patient ask for help? If the situation becomes more complex in the future, how would that affect decisions? Whom does the patient trust now and whom would he or she trust in the future to help make decisions about personal welfare?

Conclusions

The role physicians will play in the assessment of competency, once the new legislation has been implemented, has yet to be defined. Until then, physicians must develop their own personal approach to assessment using the Patient's Property Act and Mental Health Act to assess competency. The best standard of care that physicians can follow is to do a thorough assessment, focus on function as the key principle of assessment, and address the patient's unique needs. Finally, it is important for the physician to document both the process and content of the assessment accurately and to give some explanation of how the conclusions were drawn in order to be both credible and fair as an evaluator.

References

1. McLellan HS, Macaulay EF. Committee of estate and of person. *BC Med J* 1993; 35(1): 29-30.
2. MacKay MK. Financial and personal competence in the elderly. The position of the Canadian Psychiatric Association. *Can J Psychiatry* 1989;34:829-832.
3. Anderer SJ. A model for determining competency in guardianship proceedings. *Ment Phys Disabil Law Rep* 1990;March-April: 107-114.

CONTACT INFORMATION

CLIENT SERVICES, ASSESSMENT AND INVESTIGATIONS & HEALTH CARE DECISIONS

For the Regional Consultant or Case Manager in your area, please call one of the Regional Offices below or toll-free through Enquiry BC at 1-800-663-7867 and they will connect you.

Greater Vancouver Region
700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1007
Fax: (604) 660-9498

Vancouver, North Shore, Richmond, Delta, Sunshine Coast

Lower Mainland Region
700-808 West Hastings Street
Vancouver, BC V6C 3L3
Tel: (604) 775-1001
Fax: (604) 660-9479

Burnaby, Tri-Cities, North Fraser and Fraser Valley

Vancouver Island Region
1019 Wharf Street, 4th floor
Victoria, BC V8W 9J2
Tel: (250) 356-8160
Fax: (250) 356-7442

Vancouver Island from Powell River and Gulf Islands

Interior-North Region
1345 St. Paul Street
Kelowna, BC V1Y 2E2
Tel: (250) 712-7576
Fax: (250) 712-7578

Interior and Northern BC, east and north of Hope

* HEALTH CARE DECISIONS TOLL-FREE TELEPHONE: 1-877-511-4111

ESTATE LIAISON

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Fax: (604) 775-0459
Ph: (604) 775-0368

PRIVATE COMMITTEE SERVICES

700-808 West Hastings Street
Vancouver, BC V6C 3L3
Fax: (604) 660-4456
Ph: (604) 660-1500

We encourage you to visit our website at www.trustee.bc.ca for more information about our services, helpful information for clients, their families and the general public about wills and estates and options for assisting someone who needs assistance with financial or personal decision-making.